

Old friends, new friends? Prospects for EU's cooperation with intergovernmental organisations in promotion of the rule of law

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re:constitution Exchange and Analysis on Democracy and the Rule of Law in Europe

In its [July 2019 blueprint for action on the rule of law](#), the European Commission has outlined three main avenues of action on the rule of law in the EU: prevention, response and promotion. The two former areas are in many ways an extension of what the EU has been doing insofar: trying to halt the backsliding of the rule of law via preventive action and responding to breaches of values by deploying its rule of law toolbox. In these areas, both the art. 7 rule of law procedure, the political dialogues and proceedings before the CJEU have been used with mixed success.

However, when it comes to promotion of the rule of law as one of the core values of the EU, the gap between expectations and reality seems to be much wider. The recent Eurobarometer survey indicates that [56% of EU citizens are underinformed as to the rule of law](#). Insofar the EU action on promoting the rule of law internally has been next to non-existent. Fundamental Rights Agency, the EU body tasked with protection and promotion of fundamental rights, has tackled some aspects of the rule of law in its work to inform the citizens of the EU, yet the lack of strong promotion of the rule of law and accessible information on [what exactly the rule of law is](#) an outstanding issue.

The EU has been far more successful working with third countries and international organisations to promote the rule of law beyond its borders. In its action abroad, the EU is guided by art. 21 TEU, which lays out grounds for promotion and strengthening of EU values globally. On the strategic level, several core policy documents explicitly mention the rule of law. The [2012 Strategic Framework on Human Rights and Democracy](#) states that the EU will work to protect and promote the rule of law worldwide. This aspiration has been met by the EU in various ways, including bilateral cooperation with third countries, engagement with CSOs, human

rights defenders and the media as well as engagement with intergovernmental organisations.

The July 2019 blueprint introduces an element which has been insofar absent from its strategic policy on the rule of law, namely that of working with partners outside the EU on promoting the rule of law internally. This is a major change from the previous paradigm. The idea that the EU's extended partnerships with other actors active in the field of the rule of law could be leveraged towards promoting the value in EU Member States is optimistically intriguing. Of course, it remains to be seen how the EU will operationalise the new strategy, but some of the policy aims described therein invite comments. One item which stands out is the choice of proposed partners for such cooperation. Three of the organisations mentioned in the blueprint warrant particular attention: The Council of Europe, the Organisation for Security and Co-operation in Europe (OSCE) and the Organisation for Economic Co-operation and Development (OECD).

Old friends indeed?

The first partner organisation indicated in the 2019 blueprint is the Council of Europe (CoE). The CoE is a natural partner of the EU in the fields of democracy, human rights and the rule of law. It has been the regional standard-setter in these fields for over six decades. The EU and CoE developed close ties from the get-go, back when the EU was an organisation focused on economy and trade, while the CoE dealt closely with human rights, democratisation and strengthening the rule of law.

Over the decades, both organisations have developed close ties and various modes of cooperation. In 2007, the CoE and EU signed a [Memorandum of Understanding](#), which set out the overarching modalities of engagement. A high-level political dialogue is ongoing and despite a major setback of the EU aborting its attempt to ratify the ECHR following a negative assessment by the CJEU, both organisations enjoy an amicable relationship which in many ways is exemplary. The 2019 blueprint identifies several areas of engagement between EU and CoE on the rule of law and related values yet does not mention one of particular practical importance – [the Joint Programmes](#) (JPs). Initiated in 1993, the JPs are an array of capacity-building projects carried out under common modalities and frequently linked into larger, overarching frameworks. In the JP framework, the EU acts as a donor, providing the vast majority of funding, while the CoE assumes the role of an implementing partner, working on the ground through its offices and missions in countries. The JPs are very much a success story of two intergovernmental organisations working together i.a. on the rule of law, as no other two organisations have achieved such volume and intensity of conducting joint activities. Insofar, JPs have been aimed mostly at supporting non-EU Member States that comprise the Union's "close neighbourhood" – Western Balkans, Eastern Partnership and MENA being primary geographic areas where JP were implemented. In this way, JPs have functioned as instruments of EU's external policy, reaching out beyond its borders to promote and strengthen democracy, human rights and the rule of law. The EU Member States, however, have been engaged to a limited degree, and even when they feature as partners for

JP projects, they are mostly brought in as providers of capabilities and know-how and rarely as recipients of support.

Old friends in need?

The second organisation highlighted in the July 2019 blueprint is the OSCE. Here too one can at the first glance assume that it is an obvious partner for the EU. After all, the rule of law has historically featured very highly on the OSCE agenda. The OSCE was established to provide an East-West platform for dialogue, among other, on the rule of law. Here too did the EU engage early on and continue a political dialogue combined with presence in OSCE governing bodies and support for various OSCE bodies and initiatives. Most importantly for the matters related to the rule of law, the EU has been a staunch supporter of OSCE Office for Democratic Institutions and Human Rights ([ODIHR](#)), an OSCE autonomous institution working on human rights, democratisation and the rule of law.

But unlike the CoE, which despite challenges and obstacles remains arguably a powerful and relevant actor, the importance of the OSCE has since the late 90s fallen by the wayside. Paralysed by a combination of confrontational politics and general rule of unanimous agreement in all decision making, the OSCE is in dire need of major reform, not just towards expanding and upgrading its capabilities, but simply for the need of being capable to operate at declared efficiency. The timely and fortunate deployment of the OSCE Special Monitoring Mission to Ukraine ([SMM](#)) to Ukraine in 2014 brought OSCE back into spotlight and highlighted its importance, but as regards policymaking and implementation, the OSCE remains at the crossroads.

New friends, new deeds?

The third partner highlighted in the 2019 blueprint is a surprising choice just as much as the Council of Europe was a natural pick. OECD isn't an organisation which has been insofar identified as an actor active in the field of the rule of law. Unlike it is the case with other intergovernmental organisations in question, the rule of law is not enshrined as an area of activity in the OECD treaties. Neither does the OECD feature any wide strategic policy on the rule of law. While it has included throughout some areas of OECD activity and is indicated as one of elements of a properly functioning governance, the rule of law has been hardly a major focus area of the OECD.

However, the rule of law did figure into several joint activities of the EU and the OECD. Perhaps the most prominent of those is [SIGMA \(Support for Improvement in Governance and Management\)](#), a joint EU-OECD project aimed at supporting governance in several countries from EU's "close neighbourhood". As is the case with EU-CoE Joint Programmes, SIGMA is funded primarily by the EU, implemented by the partner organisation and is for all practical purposes a tool of external policy of capacity building in countries which aspire to EU membership or are closely linked to EU and its member states on economic, political or historic grounds. Promoting

and strengthening the rule of law is one of the goals of SIGMA and the project has implemented multiple activities aimed at building a culture of the rule of law in target countries. Just as is the case with the CoE-EU joint programmes, the EU member states have not featured prominently within SIGMA, with their presence limited to providing assistance and delivering know-how and expertise – once again, with the assumption that the EU is able to promote its high standards regarding the rule of law beyond its borders.

The proposed engagement, unlikely as it sounds at first, has some interesting potential. Insofar, the rule of law has been framed by the EU as a matter touching primarily civil and political rights. The impact on deficiencies in judiciary on the right to fair trial, the possible consequences of captured courts handling the European Arrest Warrant or other instruments of judicial cooperation or the consequences of discrimination in access to justice are all straightforward and obvious linkages between the rule of law and human rights. However, the rule of law affects also both economic development and the enjoyment of economic, social and cultural rights. In fact, the link between the rule of law and economy means that backsliding of the rule of law impacts a far wider range of situations than one might think of at first. Impediments to businesses due to lack of independence of courts are an obvious example, but so are issues of individuals having trouble accessing legal aid and pursuing action before courts when budget cuts force the authorities to shut down measures meant to support the full enjoyment of the rule of law. Highlighting these linkages could be an important added value to both organisations and it is doing so the EU and OECD could leverage their specific experience and strengths into approaching the rule of law from a fresh new angle.

Conclusions

An aspiration to engage with other intergovernmental organisations on the rule of law is in line with what one could expect from a serious value-based actor the EU is. But the concept of cooperating with them towards promoting the rule of law inside the EU is a novel and welcome development, one that hopefully could lead to mitigation of the internal-external divide in EU policies. Leveraging existing partnerships or expanding new ones could be greatly beneficial for strengthening the rule of law in Europe. It would also increase the credibility of the EU and help deflect arguments about it promoting a particular politically motivated take on the rule of law.

But this aspiration brings challenges, too. For starters, the EU should abstain from approaching the partnerships from the donor-implementor angle and instead focus on tailored solutions which leverage the strengths of cooperating organisations into a true partnership with the EU bringing forth not only its financial resources, but also its knowledge and skill on the rule of law. At this point, between the experience of the Commission, the excellence found in FRA and capabilities of Member States, the EU is well equipped to assume the role of a partner providing expertise, know-how and abilities beyond the purely economic input. At the same time, the EU should be mindful of tailoring the modes of cooperation and ensuring that they feature in a broader policy of engagement with each organisation. Each of these partners presents challenges and opportunities. An engagement with the CoE would

likely involve repurposing and strengthening the existing modes of cooperation. Cooperation with OECD would require setting up a new mode of partnership, ideally one that leverages the profile of OECD and the possible inroads into linkages between the rule of law and economy. Finally, regarding the OSCE, the EU could do well to figure action on the rule of law into a broader picture of strengthening the OSCE and ensuring that it will be an increasingly powerful partner for the EU in other areas as well.

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